

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6035 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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A B SHUKLA

Versus

STATE OF GUJARAT

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Appearance:

MR IS SUPEHIA for Petitioner

MR MUKESH PATEL for Respondents No. 1, 2, 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/03/98

C.A.V. JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner, an Insurance Medical Officer, Class II, in the office of the Director of Health Services, E.S.I. Scheme, Ahmedabad was earlier posted at Kalol. Under the order dated 15th September, 1983, he was ordered to be transferred from Kalol to Ahmedabad. Admittedly, the petitioner was relieved from Kalol on

20th September, 1983. While the petitioner was posted at Kalol, he was allotted a Government accommodation. The petitioner vacated the Government premises at Kalol only on 24th June, 1985. On his posting at Ahmedabad, the petitioner applied to the concerned respondent on 20th February, 1984 for the allotment of the residential quarter and under the letter dated 9-9-1984 of the respondents, he has been informed that his name has been kept in the waiting list and he would be getting the quarter when his turn will come. On 1-1-1985, the petitioner, as per his case, again applied for the quarter. Vide allotment order dated 6-4-1985, which as per the petitioner's case, was received by him on 7-6-1985, the petitioner was allotted residential quarter at D/9, Ahmedabad. The construction of the petitioner's own premises has also been completed in the meanwhile, and as such, vide his letter dated 25-6-1985, he refused the offer of allotment of the quarter and he shifted to his own house in Ahmedabad by vacating the quarter at Kalol. Under the order dated 20-7-1985, the allotment of the quarter of the petitioner at Ahmedabad was cancelled. In the said letter, it has been stated that the petitioner will not be eligible for H.R.A. for two years. So the first challenge in this special civil application is to the aforesaid part of the letter dated 20th July, 1985.

3. The respondent No.3 under its letter dated 16-9-1986 informed the Group Incharge, Class I, E.S.I.S., D/45, and D/32 to recover from the petitioner three times the rent of the quarter which he possessed at Kalol for the period from 20-9-1983 to 24-6-1985. Second challenge has been made by the petitioner in this petition to this letter dated 16-9-1986.

4. The Assistant Director, Health Services, E.S.I.S. Ahmedabad under its letter dated 29-10-1986 informed the petitioner to deposit the amount of rent as demanded in the Government treasury and to send a challan to that effect in the office of the respondent No.2. This is the third challenge made by the petitioner in this special civil application.

5. In this special civil application, the petitioner has come up with the case that he was ordered by the respondents to vacate the quarter at Kalol and further that he has pointed out his inability to do so to the respondents. However, the petitioner has very conveniently avoided to give the date on which the respondent No.2 asked the petitioner to vacate the quarter at Kalol. Similarly, the petitioner has not

produced anything on the record of this special civil application in support of his averment that he pointed out his inability to vacate the quarter at Kalol. Then the petitioner has come up with the case that he made a request to the respondent to let him continue to occupy the quarter at Kalol till May/June, 1985 so that his children could continue their studies. Further the case of the petitioner is that no express refusal or grant of the request was communicated to him. However, the petitioner has not produced any material in the form of evidence in support of his averments made in this special civil application. For want of specific evidence on record, these averments cannot be accepted. So the net result of the pleadings is that the petitioner has been asked to vacate the quarter by the respondents which he was occupying at Kalol but he has not vacated the quarter till 25th June, 1985. So it is a clear case of overstaying of the petitioner in the Government quarter. Overstaying of the officer in the Government quarter beyond the permissible limit is certainly a misconduct and it is a sorry state of affairs prevailing with the State and its officers, not to take any disciplinary action against the erring officers. It is not the case of the petitioner that the respondents have permitted him to retain the quarter at Kalol. So prima-facie it is a case where the petitioner has unauthorisedly continued to retain the possession of the quarter at Kalol. The defence given by the petitioner that as the respondents were regularly deducting from his salary, the rent of house at Kalol, is hardly of any assistance in the present case. The Government officer could have retained the quarter after his transfer at the place wherefrom he has been transferred for the permissible time and further retention could have been under the specific order of the competent authority. It is not the case of the petitioner that the competent authority has permitted him to continue in possession of the quarter till 24th June, 1985. So the petitioner, an officer of the State has taken the law in his own hands and exhibited himself to be an officer who has not respect whatsoever for law. Further he considered himself above the law and now in this special civil application he has come up with the justification for retention of the quarter on the grounds which are not germane to the issue. So long as the petitioner retained the quarter at Kalol, leaving apart his liability for paying of the penal rent and the disciplinary action to be taken against him, he could not have been entitled for H.R.A. at Ahmedabad. The demand of the rent at three times of the rent of the quarter at Kalol in the facts and circumstances of the case cannot be said to be illegal or arbitrary.

6. The learned counsel for the petitioner is unable to show that this rent could not have been demanded by the respondents. The petitioner has unauthorisedly continued in possession of the quarter and merely because the respondents have realised from him the rent, it will not amount to waiver of right of the respondents to charge penal rent from him. The learned counsel for the petitioner despite of the fact that this Court has granted opportunity to him to produce on record any resolution or circular of the Government, which permits the petitioner to retain the quarter at Kalol after his transfer and relieving therefrom, is unable to do so. He is also unable to produce on record to show that three times of the rent which the petitioner was paying to the respondents for the retention of the quarter at Kalol could not have been realised from him.

7. In view of these facts and circumstances of the case, I do not find any illegality in the action of the respondents to direct the petitioner to pay three times of the rent of the quarter at Kalol, which he retained at Kalol for the disputed period. The special civil application to the extent where the demand made by the respondents of three times of the rent for the period in dispute for retention of the quarter by him at Kalol has no merits, and to this extent, the special civil application is dismissed.

8. So far as the other claim of the petitioner is concerned, it is suffice to say that the petitioner has a right to make representation to the concerned respondent and if such a representation is made then the same may be decided in accordance with law within a period of two months of the receipt thereof. In case ultimately, the petitioner is found to be entitled for H.R.A. etc. then that amount should be adjusted towards the demand of rent for illegally occupying the quarter by him at Kalol. The respondents are further at liberty to take appropriate disciplinary action against the petitioner for retention of the quarter at Kalol by him without any authority of law. Rule stands discharged subject to the aforesaid directions. The petitioner is directed to pay Rs.1000/by way of costs of this petition to the respondents.

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